

California Special Education Hearing Office

**NOTICE OF
PROCEDURAL
SAFEGUARDS**

**University of the Pacific
McGeorge School of Law
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NOTICE OF PROCEDURAL SAFEGUARDS

Students are best served when parents and educators work together. However, sometimes there are differences of opinion between educators and parents regarding how to meet the needs of students. Federal and State special education law afford students and their parents and educational agencies certain legal rights when disputes arise, including the right to mediation and due process hearings. This booklet explains some of the options parents and educators have to resolve conflicts regarding the evaluation, eligibility, and placement of students. Although this booklet attempts to answer individual questions, you are encouraged to read all of the information and then use this booklet for reference. If you need further information about due process hearing and mediation procedures, you may call the Special Education Hearing Office at (916) 739-7053.

INTRODUCTION TO MEDIATIONS AND HEARINGS

Q: How, in general, does the due process hearing and mediation system work?

A: The due process system is designed to resolve disputes between educational agencies and parents of a child with a disability or a child suspected of having a disability. Each side is referred to as a “party” to the dispute. When a party requests a hearing, the Special Education Hearing Office notifies the other party(ies) and sets a hearing date. At the same time, the Hearing Office automatically assigns a mediator to the case to give the parties an opportunity to resolve the dispute without going to hearing. If the dispute is not resolved through mediation, or if one of the parties waives mediation (elects not to mediate), the case proceeds to hearing. A party may also request mediation-only without requesting a hearing.

Q: What is the difference between a mediation and a hearing?

A: A mediation is a voluntary, confidential, and informal meeting at which the parties and an experienced, impartial mediator attempt to resolve the dispute in a nonadversarial atmosphere. The mediator does not provide advocacy or legal advice to either side but facilitates communication between the parties. The participation of the neutral mediator increases the possibility that the parties will reach a mutually satisfactory resolution.

A hearing is a more formal, trial-like legal proceeding where all parties are given a chance to present evidence and argument before an impartial hearing officer. The hearing officer then issues a written decision, which is the final administrative decision resolving the matter.

Q: Who may request a hearing or a mediation-only?

A: The parents (including guardians) of a student with a disability or student suspected of having a disability and the educational agency or their representatives may request a hearing or mediation-only. In some cases, the student him or herself may make such a request. Information on how to request a hearing or mediation-only may be found on page 26. [Cal. Educ. Code §§ 56501 (a)-(b), 56503; 20 U.S.C. § 1415(e)-(f); 34 C.F.R. §§ 300.506(a), 300.507(a)(1)]

Q: When may a hearing or mediation-only be requested?

A: A hearing or mediation-only may be requested when there is a dispute between a parent and school personnel regarding a student's special education. Such disputes may arise concerning the evaluation, eligibility, and placement of the student. [Cal. Educ. Code § 56501(a); 20 U.S.C. §§ 1415(b)(6), 1415(e)(1), 1415(f)(1); 34 C.F.R. § 300.507(a)]

Q: What will happen to the student's education during the mediation and hearing process?

A: The law requires that the student remain in his or her present educational placement during the mediation and hearing process until a written agreement is reached or the hearing officer issues a written decision--unless the school and the parents agree otherwise. This requirement is often referred to as the "stay-put" provision of the law. The stay-put requirement applies even when a mediation-only has been requested. There are some specific exceptions to the stay put requirement regarding the proposed discipline of a student. [Cal.Educ.Code §§ 56505(d), 56346(b), 48915.6; 20 U.S.C. §§ 1415(j), 1415(k)(7); 34 C.F.R. §§ 300.514, 300.526]

MEDIATION

Q: Why should the parties participate in mediation?

A: Both federal and State law encourage the use of mediation for all special education disputes. The vast majority of disputes resolve through mediation. Mediation is a preferred method for resolving disputes for a number of reasons, including the following:

1. There usually will be a continuing relationship between the parties to the dispute even after the dispute is resolved. The parties are more likely to maintain a cooperative relationship in the future if the settlement of the dispute is by mutual agreement.
2. Through mediation, the parties have a great deal of flexibility in reaching a mutually acceptable settlement/written agreement. When the dispute goes to hearing, the hearing officer makes the final decision, which may not be completely satisfactory to either party.

3. If the parties reach an agreement in mediation, the resolution is written into the agreement that same day and can be implemented immediately. If the case goes forward to a hearing, the hearing officer must take time to consider the evidence presented at the hearing before writing a decision informing the parties of his or her determination.
4. Mediation is usually less costly than a hearing in terms of money, time and personal stress.
[Cal.Educ.Code §§ 56500.3(c); 56501(b)(2), 56505(c); 20 U.S.C. § 1415(e)(1); 34 C.F.R. § 300.506(a)]

Q: What happens during the mediation?

A: While mediators will differ in their approach to mediation, most mediations begin with all of the parties in the same room. The mediator will explain how the mediation will proceed and will usually ask the parties to summarize their positions regarding the dispute. Typically, the mediator will then suggest that the parties adjourn to separate rooms. This is called “caucusing.” During caucusing, the mediator goes back and forth between the parties trying to develop a basis for common ground and a written agreement. Sometimes, the mediator may proceed with settlement discussions with everyone in the same room for the entire mediation. Regardless of what approach is used, at some point the mediator will begin to assist the parties in drafting terms of a possible settlement agreement. At the conclusion of the mediation, the mediator may ask all of the parties to come back together in the same room to either approve the agreement or, if an agreement has not been reached, to decide how to proceed in the future. Some mediations require more than one session.

Q: Who will be the mediator?

A: The Special Education Hearing Office has under contract a number of mediators throughout the State who are experienced in the process of reconciling differences in an informal and nonadversarial manner. They are also knowledgeable in the laws and regulations governing special education. The Special Education Hearing Office will assign a specific mediator for each case. He or she will be impartial, will not provide legal advice, will not act as an advocate for any party and will try to help the parties reach a resolution of the dispute that will be satisfactory to each party. [Cal.Educ.Code § 56504.5; 20 U.S.C. § 1415(e)(2); 34 C.F.R. § 300.506(c)]

Q: How will the parties be notified of the mediation?

A: When a hearing is requested, the Hearing Office sends a notice to all parties setting the date of the hearing and also identifying the mediator who has been assigned to the case. The notice will include the mediator’s address and phone number. The mediator will contact the parties to arrange a mediation at a time that is mutually acceptable. Parties should feel free to contact the assigned mediator at any time.

Q: How soon will mediation be scheduled?

A: Shortly after the notice has been sent, the mediator assigned to the case will contact both parties to arrange for a time and place for the mediation.

Q: Where will the mediation take place?

A: The law requires that the mediation be scheduled at a time and place reasonably convenient to the parent and the student. The mediation is usually held in a local school facility. [Cal.Educ. Code §§ 56500.3(h), 56501(b)(1); 20 U.S.C § 1415(e)(2)(E); 34 C.F.R. § 300.506(b)(4)]

Q: What if one of the parties does not want to participate in mediation?

A: Mediation is based upon the voluntary commitment of all parties to try to reach a mutually satisfactory settlement. Mediation is encouraged because it is more likely to lead to a lasting settlement of the dispute. However, participation in mediation is voluntary. If one of the parties declines the opportunity to mediate, either party still has the option of proceeding to hearing. [Cal.Educ.Code § 56500.3(c); 20 U.S.C. § 1415(e)(2)(i); 34 C.F.R. §300.506(b)(1)(i)]

Q: Must a party request a mediation before asking for a hearing?

A: No. Requesting or participating in mediation is not a prerequisite to requesting a due process hearing. When a party requests a hearing, the Hearing Office automatically assigns a mediator in the hopes that the dispute will be resolved without going to hearing.

If either party waives mediation, the case will proceed to hearing. However, as explained below, a party may request mediation-only. [Cal.Educ.Code §§ 56500.3; 56346(b)]

Q: What if a party asks for mediation-only without asking for a hearing?

A: As the term suggests, “mediation-only” means that the party is asking for mediation without asking for a hearing. If mediation-only (also known as prehearing request mediation) is requested, the parties will receive a notice that a mediation has been scheduled. That notice will contain the time, date and location of mediation as well as the name, address, and phone number of the mediator assigned to the case.

Q: Is the process different when mediation-only is requested?

A: The purpose of mediation-only is the same as mediation that flows from a request for hearing: to reach a mutually satisfactory resolution of the dispute. However, there is one primary difference between the two. Attorneys cannot attend mediation-only. (At mediation that flows from a hearing request, parties may be represented by an attorney or advocate.) If parties are unable to resolve the

dispute at the mediation-only, either party has the option to then file a request for a due process hearing. [Cal.Educ.Code §§ 56500.3(e), 56500.3(g); 20 U.S.C. § 1415(e)(2)(A)(ii); 34 C.F.R. § 300.506(b)(1)(ii)]

Q: Are communications during mediation confidential?

A: Yes. Statements made by parties during the mediation are confidential and may not be used in a hearing or court action. The mediator may not be called as a witness at a hearing or court action. If the parties reach agreement, they typically agree that the written settlement document may be shown to others for purposes of enforcement and implementation of the agreement. [5 Cal. Code of Regs. § 3086(a)(1); 20 U.S.C. § 1415(e)(2)(G); 34 C.F.R. § 300.506(b)(6)]

Q: What happens if the parties reach an agreement during mediation?

A: Any agreement reached during mediation must be approved by all parties and must be consistent with the requirements of federal and State law. The mediator will assist the parties in putting their agreements in writing. Each party will sign and receive a copy of the agreement. [Cal.Educ. Code § 56500.3(f); 20 U.S.C. § 1415(e)(2)(ii); 34 C.F.R. § 300.506(b)(1)(ii); 5 Cal. Code of Regs. § 3086(d)]

Q: What happens if an agreement is not reached during mediation?

A: If the dispute is not resolved during mediation, the parties may proceed to a hearing. If requested, the mediator will assist the parties in identifying the issues to be addressed at the hearing. However, parties still are encouraged to attempt to resolve their dispute at any time after the request for hearing has been made, even once the hearing has begun.

Q: What can a parent do if a school fails to comply with a mediated agreement or hearing decision?

A: If a school or other agency does not comply with the provisions of a settlement agreement or hearing decision, a parent may file a complaint with the California Department of Education; Special Education Division; Procedural Safeguards Referral Service; 515 L Street, Room 270; Sacramento, CA 95814; Attention: PSRS Intake. Telephone: (800) 926-0648. Fax: (916) 327-3704. [5 Cal. Code of Regs. § 4600-4670]

THE DUE PROCESS HEARING

Q: What is a hearing?

A: A special education due process hearing is a formal proceeding where the parties are given the opportunity to present witnesses, documentary evidence, and oral and written argument in support of their respective positions on disputed special education issues. The hearing officer will then issue a written decision concerning the matters in dispute.

Q: What is an expedited hearing?

A: Special education law requires that certain issues be heard in an expedited time frame. Expedited hearings generally are required when the dispute is related to discipline, including a proposal to expel a student. An expedited hearing generally will be scheduled for approximately 20 days after the request for hearing is received. Although the parties are encouraged to mediate the dispute, the parties may not agree to delay the hearing in order to mediate. The hearing must be conducted and a decision rendered within 45 days of the request for hearing, without exception or extension. This means that the hearing may not be continued or postponed by consent of the parties, may not be taken off calendar, and may be delayed only for exceptional reasons. Under no circumstances may the hearing be delayed if the delay would prevent the written decision from being rendered within the 45-day time frame. [20 U.S.C. §§ 1415(k)(6), 1415(k)(7)(c); 34 C.F.R. §§ 300.525(a), 300.526(c), 300.528(b)(1)]

TIMING OF THE HEARINGS

Q: What happens when a party files a request for hearing?

A: Upon receipt of a request for a hearing, the Special Education Hearing Office promptly notifies all parties of the date, time, and location for the hearing. The same notice will explain that a mediator has been assigned to assist the parties in resolving the dispute (the mediation process is explained in the previous section).

Q: When will the hearing be scheduled?

A: The hearing (with the exception of expedited hearings, above) is scheduled approximately 25 days after the hearing request is received. The mediator assigned to the case will contact the parties to schedule mediation prior to the hearing. However, if the parties agree to delay the date of the hearing in order to continue mediating, the parties will receive a notice of the new date and time of the hearing.

Q: Will mediation delay the hearing?

A: No, not unless all of the parties agree to the delay. The parties may not agree to delay an expedited hearing in order to mediate. [Cal. Educ. Code § 56501(b)(2); 20 U.S.C. § 1415(e)(2)(A)(ii); 34 C.F.R. §§ 300.506(b)(1)(ii), 300.528(b)(1)]

Q: How long will the hearing process take?

A: Special education law requires that the hearing be held and a written decision mailed to the parties within 45 days of receipt of the request for a hearing. Unless a hearing is expedited, the hearing generally may be continued by agreement of the parties. The hearing may also be continued for good cause. (See "What is good cause?" page 10) [Cal. Educ. Code § 56505(f); 34 C.F.R. § 300.511]

Q: What is meant by a “continuance”?

A: A request for a continuance, or a request that the hearing be continued, is simply a request by one or more of the parties that the hearing be rescheduled to a later date.

Q: When may a hearing be continued?

A: A party may request a continuance of the hearing for “good cause.” If the Special Education Hearing Office determines that there is good cause, the hearing will be continued to a later date and the 45-day time limit for issuing a decision will be extended by the number of days of the continuance. [Cal. Educ. Code § 56505(f)]

Q: How does a party request a continuance?

A: Whenever possible, a party seeking a continuance should first contact the other party(ies) to inquire if the other party(ies) will agree to continue the hearing. If all of the parties agree to the continuance, they should promptly communicate their agreement in writing to the Special Education Hearing Office. In general, the agreement of the parties to a continuance constitutes good cause to reschedule the hearing to a later date. A form to request a continuance is included in each notice that is sent to the parties by the Hearing Office. The form should be completed, signed by the parties, and sent to the Hearing Office.

If the parties are unable to agree to a continuance, the party seeking a continuance should submit a request in writing to the Special Education Hearing Office and send a copy of the request to the other party(ies). The party requesting the continuance must simultaneously send a copy of the request to the other party(ies) by the same method (e.g., regular mail, fax) used to send the request to the Hearing Office. The failure to send a copy of the continuance request to the other party(ies) may result in denial of the request by the Hearing Office.

The written request should (1) state the specific facts supporting the request for a continuance, (2) indicate the time at which the party first learned of the facts that created the need for a continuance, and (3) indicate that a copy of the request has been sent to the other party(ies).

In the case of a last-minute emergency, the Hearing Office will consider continuance requests made by telephone, provided that all parties have an opportunity to address the request.

Q: How does a party respond to a continuance request by another party?

A: Before ruling on a party’s request for continuance, the Hearing Office will provide the other party(ies) a reasonable period of time to respond in writing to the

request. The Hearing Office will advise the parties of the date that all responses to the motion must be received by the Hearing Office.

The response should (1) state the specific reasons the party(ies) opposes a continuance and (2) indicate that a copy of the response has been sent to the other party or parties. The responding party must simultaneously send a copy of the response to the party that requested the continuance and to all other parties. The copy of the response should be sent by the same method used to communicate with the Hearing Office (e.g., regular mail, fax). If the party fails to send a copy of the response to the other party(ies), the Hearing Office may disregard the response.

Q: What is the Hearing Office's procedure for ruling on a continuance request?

A: All continuance requests will be ruled upon by a hearing officer. If the factual circumstances relating to the continuance request are in dispute, the Hearing Office may ask the parties to submit sworn declarations in support of their respective positions. If necessary, the hearing officer ruling on the continuance motion may hold a telephone conference to obtain additional information. Until a ruling has been made on the continuance request, the parties should be prepared to proceed on the date and time for hearing indicated on the notice of hearing.

Q: What is "good cause"?

A: The law provides that a continuance shall be granted upon a showing of "good cause." The law does not set forth the circumstances that constitute good cause. In determining whether good cause exists for a continuance, the hearing officer will consider the facts supporting the request for the continuance, prior rulings by the Hearing Office on continuance requests, and the legal mandate for speedy resolution of special education disputes. [Cal.Educ.Code § 56505(f)]

Q: What happens once a ruling is made on a continuance request?

A: If a continuance request is granted, the hearing will be rescheduled and the 45-day time limit will be extended accordingly. The Hearing Office will provide the parties with notice of the new hearing dates. If the continuance request is denied, the hearing will proceed as scheduled.

Q: Are there any other ways to continue the hearing?

A: By agreement of all the parties, the hearing may be taken "off calendar."

Q: What does it mean to take the hearing off calendar?

A: "Off calendar" means that all of the parties agree that the case shall remain open but that hearing dates will not be scheduled until requested by one of the parties. By agreeing to have the hearing taken off calendar, the parties also agree that the 45-day requirement for issuing a final hearing decision is extended by the number

of days the matter is off calendar, plus an additional 30 days to provide time for the Hearing Office to reschedule the hearing. A hearing that is off calendar will be returned to the calendar and assigned specific dates for hearing upon receipt of a written request by any party.

Q: How does a party take the hearing off calendar?

A: If all of the parties agree to take the hearing off calendar, they should promptly communicate their agreement in writing to the Hearing Office. A form for notifying the Hearing Office that the case is off calendar is included in each notice sent to the parties by the Hearing Office. (see page 31)

Q: How long can a hearing be off calendar?

A: Because the law anticipates that special education disputes be resolved expeditiously, there is a limit to how long a hearing may be off calendar. The Special Education Hearing Office will periodically review cases that are off calendar. If it appears that there has been no recent progress toward a resolution of the case, the Special Education Hearing Office will notify the parties that the case will be dismissed unless we are informed that the case is still active. If the case remains off calendar for an extended period of time, the Special Education Hearing Office may put the matter back on calendar and require the parties to either go forward to hearing or withdraw the hearing request.

PREHEARING PROCEDURES

Q: What are prehearing procedures?

A: “Prehearing procedures” refers to the ways in which certain hearing issues are addressed prior to the actual hearing – either through motions by the parties or through their participation in prehearing conferences. A “motion” is simply a written request that a hearing officer rule (make a decision) on a particular issue prior to the hearing.

Q: When should a party make a prehearing motion?

A: The following are examples of issues that are appropriate for resolution through a prehearing motion: (1) whether good cause exists for a continuance; (2) the student’s stay put placement pending resolution of the dispute; (3) dismissal of a party or parties to the hearing, (4) which party will present its case first at the hearing, and (5) consolidation of two cases for hearing into one.

Q: How does a party make a prehearing motion?

A: A party may obtain a ruling on a prehearing issue by submitting a motion in writing to the Special Education Hearing Office. The motion must be simultaneously sent to the other parties. The party making the motion must (1) set forth the specific facts supporting the motion and (2) indicate that a copy of the motion has been

sent to the other party(ies). The motion should be made far enough in advance of the hearing to allow a reasonable amount of time for the other party(ies) to respond and for the hearing officer to rule on the motion. If the party fails to provide sufficient time, the hearing officer may have to deny the motion or delay ruling on the motion until the hearing.

The other party(ies) will be given a specific time by which to file a written response to the motion. The responding party(ies) must send a copy of the response to the other parties, and communicate in writing to the Hearing Office that the copy has been sent.

Q: What if there is a disagreement as to the facts relating to the motion?

A: If the parties disagree as to the facts relating to the motion, the hearing officer may request affidavits or sworn declarations from the parties, convene a prehearing conference by telephone to receive sworn testimony related to the disputed facts, or delay ruling on the motion until the hearing convenes to allow the parties to provide evidence relating to the disputed facts. In ruling on a motion where there are disputed facts, the hearing officer will not rely solely on statements made by an attorney or advocate representing a party, unless the attorney or advocate testifies under oath and has direct knowledge of the facts in dispute.

Q: How will the parties be notified of the Hearing Officer's ruling on a prehearing motion?

A: The parties will be notified of the hearing officer's ruling on a prehearing motion in one of three ways: by Minute Order, Summary Order, or Full Order. In routine matters such as continuance requests, the hearing officer will write a Minute Order in the file and a clerk for the Hearing Office will notify the parties by telephone of the ruling. In other instances, the hearing officer may issue either a written Summary Order or Full Order. A Summary Order does not recite the factual background of the case but simply summarizes the reasons for the ruling. A Full Order contains a more thorough discussion of the facts and the legal basis for the ruling. The hearing officer will decide which form of order will be utilized.

Q: What is a prehearing conference?

A: A prehearing conference is a meeting of a hearing officer and the parties to the hearing either by telephone or in person prior to the first day of the hearing. A hearing officer may order a prehearing conference to address a prehearing motion or any other matter the hearing officer determines is necessary to resolve prior to the hearing. The prehearing conference may address procedural issues to ensure that the hearing is fair to all parties and is conducted in an efficient manner.

Q: Will a prehearing conference be held if requested by a party?

A: If all parties file a request for a prehearing conference, along with a Certificate of Readiness, at least 15 days before the hearing is scheduled to begin, the Hearing Office will schedule a prehearing conference. (See example of Certificate of Readiness/Request for Prehearing Conference on pages 32 and 33) A prehearing conference should not be requested until the mediation process has been completed, unless one or both parties expressly waives mediation. If all or some of the parties fail to request a prehearing conference, the Hearing Office will decide whether a prehearing conference is necessary.

Q: What is a Certificate of Readiness?

A: A Certificate of Readiness is a statement indicating that a party is prepared to begin the hearing on the day the hearing is scheduled. (Again, see pages 32 and 33) Once a party signs the Certificate, the Hearing Office will grant a continuance only for exceptional reasons such as severe and sudden illness or death.

Q: When may the prehearing conference be scheduled?

A: A prehearing conference may be scheduled any time prior to the hearing. If both parties request a prehearing conference and file a Certificate of Readiness, the prehearing conference normally will be scheduled on the Monday prior to the week in which the hearing is scheduled to begin.

Q: Where will the prehearing conference be conducted?

A: In many cases, the prehearing conference will be conducted by telephone. All parties and their representatives may participate in the telephone conference. In some cases, the hearing officer will order that the prehearing conference be held in person at a location reasonably convenient to the parent.

Q: What matters will be discussed during the prehearing conference?

A: The parties may discuss with the hearing officer almost any issue concerning how the hearing will proceed, such as clarification of issues, the length of the hearing, and additional dates for the hearing. A prehearing conference may also involve discussion of which party will put on its case first and what documentary evidence and witnesses will be presented by the parties.

Q: What will be the outcome of a prehearing conference?

A: Shortly after the prehearing conference, the hearing officer will issue a prehearing conference order and will forward it to the parties. That order will provide a framework for an efficient and expeditious hearing.

Q: What happens if a party does not attend the prehearing conference?

A: If the party who requested the hearing (petitioner) fails to appear at the prehearing conference without good cause, the case may be dismissed. If a party who did not

request the hearing (respondent) does not appear at the prehearing conference without good cause, the prehearing conference may be conducted without that party and the hearing will take place on the day scheduled.

Q: Will the same hearing officer who conducted the prehearing conference also conduct the hearing?

A: The Hearing Office will attempt to assign the hearing officer who conducted the prehearing conference to conduct the hearing. However, scheduling problems may require that another hearing officer be assigned to conduct the hearing.

PREPARING FOR THE HEARING

Q: What should a party do to prepare for a hearing?

A: In preparing for a hearing, a party must not only determine what issues need to be addressed by the hearing officer but also arrange to provide evidence to support the party's position on those issues during the hearing. Additionally, the law requires that prior to the hearing, the parties must make certain disclosures to the other parties to the hearing, including notice of the following: (1) proposed issues (2) proposed resolutions to those issues (3) evidence to be presented at the hearing (4) witnesses that may be called to testify, and (5) representation by an attorney. [Cal.Educ.Code § 56505(e)(6)-(7); 20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. §§ 300.509(a)(3), 300.509(b)(1)]

Q: What is a notice of issues and proposed resolutions?

A: To allow each party in a special education hearing to prepare for the hearing, the law requires that each party send a notice to the other parties at least 10 days prior to the first day of the hearing stating what issues that party believes should be decided by the hearing officer during the hearing and a statement of what that party believes the resolution of those issues should be. "Proposed resolution" means what a party wants the hearing officer to order with respect to an issue. At the same time, each party must send a copy of the issues and proposed resolutions to the Special Education Hearing Office. [Cal.Educ.Code § 56505(e)(6)]

Q: What if an unrepresented parent needs help stating the issues and proposed resolutions of the issues?

A: The law provides that a parent who is not represented by an attorney has the right to request assistance in identifying the issues and the proposed resolution of the issues. This assistance may be obtained by calling the Special Education Hearing Office at (916) 739-7053. [Cal.Educ.Code § 56505(e)(6)]

Q: How does a party give notice of the evidence the party plans to present during the hearing?

A: The law requires that each party provide the other parties and the Special Education Hearing Office with copies of all documents that the party plans to use during the hearing. Each party also must provide the other parties and the Hearing Office with a list of all witnesses who will provide testimony in the hearing and a brief description of their general area of testimony. [Cal.Educ.Code § 56505(e)(7)]

Q: When must the evidence be provided to the other party(ies) and the Hearing Office?

A: The evidence must be received by the other party(ies) at least five business days in advance of the first day of hearing. Enclosed with this booklet is a calendar on which all nonbusiness days of the year are circled. To use this calendar in determining when to submit evidence, count five business days back from the first day scheduled for the hearing. The other party(ies) must receive your evidence no later than that day. [Cal.Educ.Code § 56505(e)(7); 20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. §§ 300.509(a)(3), 300.509(b)(1)]

Q: What happens if a party fails to provide the evidence to the other parties five business days prior to the hearing?

A: A party who does not receive adequate prior disclosure of evidence may ask the hearing officer to exclude the evidence from the hearing. It is within the discretion of the hearing officer to determine whether the evidence will be excluded. [Cal.Educ.Code § 56505.1(f); 20 U.S.C. § 1415(f)(2)(B); 34 C.F.R. § 300.509(a)(3)]

THE HEARING

Q: Where will the hearing be held?

A: The law requires that the hearing be held at a place reasonably convenient to the parent and the pupil. Hearings are usually held in a local school facility. [Cal. Educ. Code § 56505(b)]

Q: Who will conduct the hearing?

A: The hearing will be conducted by an impartial hearing officer employed by the Special Education Hearing Office. The hearing officer is not an employee of a local or state public educational agency. The hearing officer is knowledgeable of the laws governing special education and administrative hearings. [Cal.Educ.Code § 56501(b)(4); 20 U.S.C. § 1415(f)(3); 34 C.F.R. § 300.508]

Q: What happens during the hearing?

A: The purpose of the hearing is to allow all parties to present evidence supporting their positions and to explain to the hearing officer why they believe they should prevail on the issues in the hearing. The hearing is not governed by formal rules of procedure or evidence, and the hearing officer will attempt to ensure that all parties have an adequate opportunity to present their cases. Although less formal than a court trial, the hearing will proceed in an orderly fashion. [Cal.Educ.Code §56505(e); Cal. Code of Regs. § 3082; 20 U.S.C. § 1415(h); 34 C.F.R. § 300.509]

At the beginning of the hearing, the hearing officer turns on the tape recorder to make a record of the hearing and, after identifying the case and the parties for the record, briefly explains how the hearing will proceed. The hearing officer then usually clarifies the issues to be decided by discussing the case with the parties. The hearing officer may only speak with a party about the case in the presence of the other parties. It is also important to have any substantive discussions about the case on the record. [5 Cal.Code of Regs. § 3084]

The hearing officer will discuss with the parties the benefits of a mutual settlement of the case and will provide the parties an opportunity to discuss settlement off the record, or to request a mediator. If settlement is not achieved, the hearing officer will put into evidence the documents that the parties have presented, and will structure the hearing including assisting in determining the order in which the witnesses will be presented. [Cal.Educ.Code § 56505(c)]

Once preliminary matters are completed, the parties are given an opportunity to make opening statements. Opening statements should provide the hearing officer with a brief summary of the parties' positions on the issues for hearing. Following opening statements, the party presenting first will call its witnesses, with each witness being sworn to tell the truth. After one party has presented its witnesses and other evidence, the other party(ies) will call its (their) witnesses. Each party will be given an opportunity to ask questions of the other parties' witnesses, and the hearing officer may also ask questions of the witnesses. The hearing officer may ask the parties to be flexible as to when witnesses are called to ensure that all relevant testimony is presented. At the end of the hearing, each party is allowed to make a closing statement. The hearing officer may ask the parties to make oral closing statements, and sometimes the closing statements will be submitted in writing after the hearing. After closing statements, the hearing record is closed. The hearing officer then prepares a written decision, which will be sent to the parties. [5 Cal.Code of Regs. § 3082(b)]

Q: What are the rights of the parties during the hearing?

A: All of the parties have the following rights during the hearing:

- **Right to representation.** All parties have the right to be accompanied, advised, and assisted by counsel and by persons with special knowledge or training related to the problems of disabled children.
- **Right to present evidence and argument.** All parties have the right to call witnesses and present written and other evidence that will help them prove their cases. They will also be given the opportunity to argue the merits of their cases.
- **Right to confront and cross-examine adverse witnesses.** All parties have the right to be present when witnesses testify against their positions and to ask them questions concerning their views.
- **Right to compel the presence of witnesses.** If a relevant witness refuses to appear at the hearing voluntarily, the party requesting that witness has the right to force him or her to come to the hearing. This is accomplished by the use of subpoenas, which are issued by the Special Education Hearing Office. Before requesting a subpoena, the party should first determine whether the witness will attend the hearing voluntarily.
- **Right to a record of the hearing.** The hearing officer will record the hearing with a tape recorder. The parties have a right to a written or electronic copy of that record.
- **Right to written finding of fact and decision.** The hearing officer must prepare a written decision setting forth his or her findings of fact, analysis of the law, and final order.
- **Right to notice of issues for hearing and proposed resolution of the issues.** The law requires that the parties submit to each other at least ten (10) calendar days prior to the hearing what they believe are the issues to be resolved in the hearing and their proposed resolution of the issues.
- **Right to prohibit the introduction of surprise evidence.** A hearing officer may prohibit the introduction of evidence at the hearing that has not been properly disclosed at least five business days before the hearing.
- **Right to request the exclusion of witnesses.** A party may ask the hearing officer to order prospective witnesses to remain outside the hearing room while other witnesses are testifying. This practice allows the hearing officer to compare the testimony of witnesses who have not heard each other testify.
- **Right to an interpreter.** If the primary language of a party is other than English, an interpreter will be provided by the Special Education Hearing Office. It is important that the parties notify the Hearing Office well before the hearing when an interpreter is needed.

[Cal.Educ.Code §§ 56505(e), 56505.1(f); 5 Cal.Code of Regs § 3082(c); 20 U.S.C. § 1415(h); 34 C.F.R. § 300.509]

Q: Do parents have any additional rights during the hearing process?

A: Yes. The law provides the following special rights to parents in addition to the rights set out above.

- **Right to examine pupil records.** Parents have the right to examine all records maintained by the school that are related to their child and to receive copies within five days after requesting them. Parents should call or write their local school district to request access to pupil records.
- **Right to a public hearing.** Parents have the right to allow members of the public to attend the hearing.
- **Right to have the pupil present at the hearing.** Parents have the right to have the disabled pupil present during the hearing.
- **Right to a written verbatim transcript of the hearing.** Parents have the right to a written verbatim transcript of the hearing. If a parent wishes to have such a transcript, the parent should submit their request in writing to the Special Education Hearing Office after the conclusion of the hearing.

[Cal.Educ.Code §§ 56501(b)(3), 56501(c)(2), 56501(c)(1), 56505(e)(4); 5 Cal.Code of Regs § 3082(f); 34 C.F.R. § 300.509(c)(1)(i); 34 C.F.R. § 300.501]

Q: Are parents entitled to a free attorney?

A: All parties have the right to be represented at all stages of the hearing process by an attorney or other representative of their choosing. That does not mean that the school or other public agency must pay for the parent's attorney. Parents may be entitled to have costs of attorney's fees reimbursed if they prevail as a consequence of initiating a due process hearing. The federal court, in its discretion, may award reasonable attorney's fees to the parent(s) or guardian(s) of a disabled child who is the prevailing party. [Cal.Educ.Code §§ 56505(e)(1), 56507(b); 20 U.S.C. §§ 1415(h), 1415(i)(3); 34 C.F.R. §§ 300.509(a)(1), 300.513]

Q: Must a party give notice to the other parties if the party plans to use an attorney?

A: Yes. The law requires that a party notify all other parties 10 days before a hearing if that party intends to be represented by an attorney at the hearing. [Cal.Educ.Code § 56507(a)]

Q: Where can a party get assistance in finding an attorney or other representative?

A: When the Special Education Hearing Office receives a request for hearing, it will provide all parties with a list of persons and organizations within their geographical area that can provide representation.

Q: What authority does the hearing officer have?

A: The hearing officer has the authority to conduct the hearing, rule on all procedural matters, take actions necessary to complete the hearing in an efficient and expeditious manner, and render the final administrative decision. By statute, the hearing officer is given additional specific authority to:

- Question a witness on the record prior to any of the parties doing so;
- With the consent of all parties to the hearing, request that conflicting experts discuss an issue with each other while on the record;
- Visit the proposed placement site when the physical attributes of the site are at issue;
- Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony, or if the hearing is continued for at least five days prior to the witness testifying;
- Order that an impartial assessment of the pupil be conducted (the cost of which will be paid by the Hearing Office);
- Call independent medical specialists as witnesses in cases involving the provision of related services by other public agencies (the cost of such witnesses will be paid by the Hearing Office); and
- Initiate contempt sanctions and/or impose expenses and attorney's fees against a party, attorney or other representative.

[Cal.Educ.Code § 56505.1; 5 Cal.Code of Regs. § 3088]

Q: What happens if a party does not attend the hearing?

A: If the person who requested the hearing (petitioner) does not appear at the hearing, the hearing may be dismissed. If the person who did not request the hearing (respondent) does not attend the hearing, the hearing may proceed without that party and a decision will be rendered based upon the evidence presented during the hearing.

Q: Who is required to go first in a hearing?

A: The party who has requested the hearing generally is expected to put on its case first. If the party requesting the hearing believes that the other party should be required to put on its case first, the requesting party may submit a written motion to the Hearing Office to change the order of who goes first. The requesting party should submit the motion as soon as possible, but at least 10 days before the hearing. The party making the motion should simultaneously send a copy of the motion to the other party or parties and should communicate to the Hearing Office in writing that the copy has been sent. A hearing officer may arrange a conference call to discuss this issue with all parties prior to ruling on who will be required to go first.

Q: What is “evidence” and how is it presented?

A: Evidence is anything that helps a party prove a fact that is necessary for that party to prevail in the hearing. Some common forms of evidence are testimony of witnesses, including the parent’s own testimony, and documents. Often, many documents in the student’s educational record are put into evidence.

Q: Must witnesses give testimony under oath?

A: Yes. If a witness’s testimony is to be used as evidence in the hearing, the witness must first take an oath to tell the truth. The oath will be given whether the matter is being heard by telephone or during a hearing. When there is a dispute as to what the facts are, the parties will need to present witnesses who have direct knowledge of the facts. [5 Cal.Code of Regs. § 3082(b)]

Q: Can a party prove its case with documents alone?

A: The law provides that a hearing officer may not base a decision on hearsay alone, but must have some other evidence to support the decision. Most documents are hearsay. Therefore, it is important that each party bring witnesses to the hearing who can testify about what they have observed or who can express opinions concerning the issues in the hearing. [5 Cal.Code of Regs. § 3082(b)]

Q: How are documents put into evidence?

A: To put documents into evidence, the party presents documents to the hearing officer and asks that they be put into evidence. Normally this is done at the beginning of the hearing. As indicated elsewhere in this booklet, all parties must provide copies of the documents they wish to offer as evidence to the other parties and to the Hearing Office five business days prior to the hearing.

Documentary evidence is often cumbersome, and dealing with it in the hearing can be confusing and time-consuming. To avoid this problem, each party should logically organize its own documents. Parents should assign a letter to each of their documents. Districts should assign a number to theirs. The documents should be three-hole-punched, and placed in a binder with tabs or dividers to provide for easy access to each document during the hearing. The pages of the entire binder of evidence can also be numbered consecutively to permit easy reference during the hearing.

The parties may also agree among themselves before the hearing what documents will be placed into evidence. The documents can then be placed in a single binder in a logical order with tabs or dividers to make access easy. The total evidence packet should be indexed and the pages should be numbered consecutively to permit easy reference during the hearing.

All parties should also bring an extra copy of their evidence in a binder for use by witnesses.

Q: How does a party get a witness to come to the hearing?

A: The party requesting the presence of the witness should first contact the witness and ask him or her to come to the hearing voluntarily. (Parents wishing to call a witness who is an employee of the educational agency may contact the representative of the educational agency and ask for assistance in making the witness available.) If a witness refuses to attend the hearing voluntarily and a party believes that the witness is important to its case, that party may serve the person with a subpoena requiring his or her attendance. The subpoena may be requested by telephoning or writing the Special Education Hearing Office. The Special Education Hearing Office may ask for the name of the person to be served and an explanation of why that witness is needed. [5 Cal.Code of Regs. § 3082(c)(2)]

Q: How does a party serve a subpoena on a witness?

A: The person serving the subpoena must first fully complete the information required on the subpoena form received from the Special Education Hearing Office. No one is obliged to attend as a witness in a hearing in the state of California unless he or she is a resident of California.

Witnesses who are subpoenaed to a hearing are entitled to a witness fee and mileage costs to and from their place of residence. The current fee is \$35.00 per day, plus mileage at the rate of 20 cents per mile. The party requesting the witness is responsible for paying these costs.

The subpoena must be served by a person hand-delivering a copy of the subpoena directly to the witness at a reasonable time in advance of the hearing. If the witness demands his or her fees and mileage allowance at the time the subpoena is served, the person serving the subpoena must provide one day's fees plus the mileage costs necessary for the trip.

After the subpoena is served, the person serving the subpoena must fill out the Proof of Service on the back of a copy of the subpoena and that copy should be presented to the hearing officer at the time of the hearing.

There are a number of other specific requirements and statutes relating to the use of subpoenas. An attorney or process-serving firm can be consulted if additional assistance is required with the subpoena procedure. [Cal.Gov.Code § 11450.40; 5 Cal.Code of Regs. §§ 3082(c)(2), 3083]

Q: How does a party acquire documents needed for its case that are in the possession of another party?

A: The party seeking documents should first make a request of the person or organization that possesses the document(s) to determine if the document(s) will be made available voluntarily. Parents have a right to educational records maintained by California public and private schools regarding their child. If a document is possessed by a third party and that party will not make the document available, a subpoena duces tecum may be requested from the Special Education Hearing Office. The request must be in writing and must include (1) the name of the person served, (2) a description of the documents that are needed, (3) a brief explanation of why those documents are necessary to the case, and (4) a statement of the efforts that have been made to obtain the documents. The party requesting the subpoena duces tecum should simultaneously send a copy of the request to the other party(ies) and should communicate to the Hearing Office in writing that the copy has been sent. A hearing officer will determine whether the subpoena duces tecum will be issued. The hearing officer must find that there is reasonable necessity to issue a subpoena duces tecum. The subpoena duces tecum is served in the same way as the regular subpoena above. [Cal.Educ.Code § 56501(b); 34 C.F.R. § 300.501; 5 Cal.Code of Regs. §§ 3082(c)(2), 3083]

Q: What other information is available to parties to help them prepare for the hearing?

A: It is important for a party to a hearing to review the basic laws relating to special education and special education hearings. Below are the primary sources of law relating to special education and to hearings and mediations:

- **California Statutes** Most of the State's statutes relating to special education are contained in the Education Code. Part 30 of the Education Code from Section 56000 through Section 56885 contains the primary statutes relating to special education. Sections 56500-56507 contain the law relating to hearings and mediations. There are a number of sections in other state codes that also relate to special education procedures, including the Administrative Procedure Act, found in the California Government Code.
- **California Regulations** Regulations of the State Board of Education relating to special education are contained in Title 5 of the California Code of Regulations (CCR), Section 3000-3089.
- **A Composite of Laws** The California Department of Education publishes A Composite of Laws relating to special education, which includes all relevant state statutes and regulations. Copies of this publication may be purchased from the California Department of Education Press for \$20.00, plus local sales tax, shipping and handling (approximately \$30.00 total). Parents of children with a disability are eligible to receive one complimentary copy. The California Department of Education Press can be contacted by calling (800) 995-4099.

- **Federal Statutes** Federal statutes relating to special education are contained in the United States Code, Volume 20, Section 1400-1420. To view a copy of the United States Code, a person may need to visit his or her local library or county law library.
- **Federal Regulations** Federal regulations relating to special education are contained in the Code of Federal Regulations (CFR). The CFR may be available at a local library or county law library.
- **Court Decisions** There are a number of court decisions that interpret the statutes and regulations. These court decisions may be found at a county law library.
- **Hearing Decisions** Although prior hearing decisions by the Special Education Hearing Office are not considered binding authority on other hearings, a review of prior decisions of the Special Education Hearing Office may be helpful in seeing how similar issues have been addressed in the past. Prior hearing decisions and orders can be found on the Department's Web site at <http://www.cde.ca.gov/spbranch/sed/intracdb.htm>.

Other useful sources of information include the following:

- **California Department of Education** To obtain information about dispute resolution, including how to file a complaint, contact the California Department of Education, Special Education Division, Procedural Safeguards Referral Service at (800) 926-0648 or fax to (916) 327-3704 or visit the Department's Web site at <http://www.cde.ca.gov/spbranch/sed/>.
- **Special Education Rights and Responsibilities** This is a useful publication prepared by the Community Alliance for Special Education (CASE) and Protection and Advocacy, Inc. (PAI). It may be obtained by contacting CASE at (415) 928-2273 or by contacting PAI at (800) 776-5746.

Q: What if the party requesting the hearing decides to withdraw the request for hearing?

A: If the party requesting the hearing decides that it does not want to proceed to hearing, the party shall inform the Hearing Office and the other parties in writing of the decision to withdraw. If the party requesting the hearing wishes to withdraw the case after the hearing has begun and testimony has been heard, the party shall make a motion to the presiding hearing officer.

Q: What if a party disagrees with the decision of the hearing officer?

A: All parties have the right to appeal any hearing decision to a court of competent jurisdiction within 90 days of the receipt of the decision. Appeals can be made to either State or federal court. The hearing officer's decision is the final administrative determination and is binding on all parties unless a party

successfully appeals to court. [20 U.S.C. §§1415(i)(2), 1415(i)(1)(A); 34 C.F.R. §§ 300.512, 300.510]

Q: What can a parent do if the educational agency or other public agency providing services to the student fails to comply with a settlement agreement or hearing decision?

A: If a school or other agency does not comply with the provisions of a settlement agreement or hearing decision, a parent may file a complaint with the California Department of Education; Special Education Division; Procedural Safeguards Referral Service; 515 L Street, Room 270; Sacramento, CA 95814; Attention: PSRS Intake. Telephone: (800) 926-0648. Fax: (916) 327-3704. [5 Cal.Code of Regs. § 4600-4670]

Q: What are additional rights of parents in relation to special education?

- **The right to initiate a referral to special education.** parent has the right to request that a child be assessed and considered for special education services.
- **Right to an independent assessment.** If a parent disagrees with an assessment that has been obtained by the school, the parent has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists. However, if the school believes it should not be required to pay for such an assessment, it must, without unnecessary delay, request a hearing to show that its assessment is appropriate. If the school establishes at a hearing that its assessment was appropriate, it will not be required to pay for the independent assessment.
- **Right to information about and participation in the development of the pupil's individualized education program (IEP).** The law provides that parents have the right to participate in the development of a child's individualized education program. The law further requires the school to inform parents of their child's right to a free appropriate education and to provide information concerning all available alternative programs, both public and nonpublic.
- **Consent of parents to perform an assessment.** California law provides that written parental consent must be obtained before an initial assessment of a pupil is conducted unless the school prevails in a due process hearing relating to such assessment.
- **Consent of parents before placement in special education.** The law provides that written parental consent must be obtained before a pupil is placed in a special education program unless the school prevails in a due process hearing related to such placement.

[Cal.Educ.Code §§ 56300-303, 56506(c), 56329(b), 56321(a), 56321(c), 56346(a); 20 U.S.C. §§ 1412 (a), 1415(a)-(d), 1414(a)(1)(C), 1414(c)(3); 34 C.F.R. §§ 300.121, 300.125, 300.502, 300.345, 300.505(a)(1)(i)-(ii)]

REQUESTING A MEDIATION AND/OR HEARING

Q: How does one request a hearing and mediation or mediation-only?

A: Both parents and school personnel may request a hearing and mediation or mediation-only by submitting a written request to the Special Education Hearing Office via mail to 3200 Fifth Avenue, Sacramento, CA 95817, or by facsimile to (916) 739-7066. The request should provide as complete information as possible. Included should be:

1. Name of student.
2. Date of birth of the student.
3. Student's grade level.
4. Address where the student resides.
5. School district where the student attends.
6. School district where the student resides.
7. Parent or guardian's name, address, and telephone number.
8. Any other school district or public agency that is responsible for providing services that should be a party to the mediation and/or hearing.
9. A brief explanation of why the mediation and/or hearing is being requested, and
10. A proposed resolution of the problem.

It is not necessary to send a specific form to request a hearing and mediation or mediation-only. However, optional forms are available on pages 27-30 of this booklet or may be obtained by calling the Special Education Hearing Office at (916) 739-7053 or by going to the California Department of Education website at www.cde.ca.gov/spbranch/sed/intracdb.htm.

For further information about due process hearing and mediation procedures, you may call the Special Education Hearing Office at (916) 739-7053.

MEDIATION AND DUE PROCESS HEARING REQUEST FORM

STUDENT'S INFORMATION			
Name: (Required)			
Address: (Required)			
Date of Birth:			
Grade Level:			
School District of Residence:			
PARENT'S INFORMATION			
Father's Name: (Required)		Mother's Name: (Required)	
Address: (Required)		Address: (Required)	
Home Phone:	()	Home Phone:	()
Work Phone:	()	Work Phone:	()
FAX #:	()	FAX #:	()

PARTIES TO BE NAMED	
(Required - Any school district or public/private agency that is responsible for providing services should be named as a party in this case.)	
District of Residence:	
Additional Parties:	
Address, phone and FAX:	

REQUESTING PARTY (Check appropriate box)					
	Parent/Student		School District		Other Agency
	Advocate/Attorney (Parent / Student)		Advocate / Attorney (School District)		
If requesting party is someone other than the parent/student, please complete the following:					
Name:				Organization:	
Address:				Phone:	
Interpreter Required:		Yes	No	FAX:	
Language:				Date:	

(A description of the nature of the problem of the child, including facts relating to the problem.)

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MEDIATION ONLY HEARING REQUEST FORM

STUDENT'S INFORMATION			
Name: (Required)			
Address: (Required)			
Date of Birth:			
Grade Level:			
School District of Residence:			
PARENT'S INFORMATION			
Father's Name: (Required)		Mother's Name: (Required)	
Address: (Required)		Address: (Required)	
Home Phone:	()	Home Phone:	()
Work Phone:	()	Work Phone:	()
FAX #:	()	FAX #:	()

PARTIES TO BE NAMED	
(Required - Any school district or public/private agency that is responsible for providing services should be named as a party in this case.)	
District of Residence:	
Additional Parties:	
Address, phone and FAX:	

REQUESTING PARTY (Check appropriate box)					
<input type="checkbox"/>	Parent/Student	<input type="checkbox"/>	School District	<input type="checkbox"/>	Other Agency
If requesting party is someone other than the parent/student, please complete the following:					
Name:				Organization:	
Address:				Phone:	()
Interpreter Required:	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	FAX:
					()
Language:				Date:	

(A description of the nature of the problem of the child, including facts relating to the problem.)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface. There is no handwriting or other markings on the paper.

REQUEST FOR POSTPONEMENT OF DUE PROCESS HEARING

A party seeking a continuance should first contact all other parties to see if they will agree to the continuance. If all parties agree to the continuance, they should promptly communicate their agreement in writing to the Special Education Hearing Office along with the proposed hearing dates they have agreed to. NOTE: Hearings are scheduled for two consecutive days and commence either on Tuesday or Thursday.

Student's Name: _____ SSN# _____

I request that the Special Education Hearing Office postpone the Due Process Hearing in the above case. The Due Process Hearing is currently scheduled for _____.

I request that the Due Process Hearing be rescheduled to _____, or the next available hearing date.

The reason I am requesting postponement of the Due Process Hearing is:

- ☐ We would like to continue in mediation in the hope of reaching a mutually acceptable resolution.
- ☐ We would like to continue the hearing for other reasons. (Please explain in detail on an additional piece of paper.)
- ☐ We agree that the Due Process Hearing be taken off calendar until one of the parties asks to have it re-calendared. (If a request is being made to take the hearing off calendar, all parties must agree.)

-
- ☐ The parties are unable to agree to continue the hearing. (Please explain in detail on another page your reasons for requesting the continuance.)

Note: Taking the hearing off calendar is not the same as closing the case. If you wish to have your case closed, please contact the Hearing Office for the appropriate form.

I understand that if the hearing is postponed to another date, I am agreeing to extend the 45-day requirement for issuing a final hearing decision by the number of days of the postponement. If I request that the matter be taken off calendar, I am agreeing to extend the 45-day requirement for issuing a final hearing decision by the number of days the matter is off calendar, and an additional 30 days to provide time to reschedule the hearing.

(Signature of Parent/Representative)

Date

(Signature of District/Agency Representative)

Date

CERTIFICATE OF READINESS AND REQUEST FOR PREHEARING CONFERENCE

A prehearing conference will be scheduled if all parties file a Certificate of Readiness and Request for Prehearing Conference indicating that they are ready to proceed with the hearing on the dates currently scheduled and that they do not anticipate the need for a continuance. A prehearing conference should not be requested until the mediation process has been completed, unless one or both parties expressly waives mediation. To ensure that a prehearing conference is scheduled, the Certificate of Readiness and Request for Prehearing Conference (see attached form) must be received by the Hearing Office **at least 15 days prior to the first scheduled day of hearing**. If one or more, but not all, of the parties request a prehearing conference and file a Certificate of Readiness, the Hearing Office will decide whether a prehearing conference should be scheduled. The Hearing Office may schedule a conference regardless of whether or not any party requests a conference. When it is determined that a conference will be scheduled, the Hearing Office will contact each party to set the time for the conference. If the prehearing conference will be face-to-face, the Hearing Office will determine the location of the conference. If a telephone prehearing conference is to be scheduled, the Hearing Office will ask parties to provide phone numbers where they can be reached at the time scheduled for the conference. Each party and its representative(s) will be able to participate in the conference.

Once a party has filed a Certificate of Readiness and Request for a Prehearing Conference, the Hearing Office will grant continuances of the hearing for exceptional good cause only.

During the prehearing conference, the hearing officer may address a number of matters including clarification of the issues; the length of the hearing; additional days for the hearing, if necessary; need for an interpreter; the date for exchange of evidence; whether the hearing will be open or closed; the anticipated witnesses and their scheduling; the possibility of settlement; the need for other prehearing orders; and other related matters.

The prehearing conference will not address requests for continuances, but may allow the parties to agree on alternative dates for the hearing.

All parties are expected to participate in the prehearing conference. If the party requesting the due process hearing fails to participate in the prehearing conference, the case may be dismissed.

**CERTIFICATE OF READINESS
AND REQUEST FOR PREHEARING CONFERENCE**

Case Name: _____ Case Number: SN _____

Name of Parent/District Completing this Certificate: _____

Dates Currently Scheduled for Hearing: _____

☐ I certify that I am ready to proceed to hearing on the dates set out above and request that a prehearing conference be scheduled in this case.

Signature of Party/Representative

Date

The prehearing conference normally will be held on the Monday of the week preceding the scheduled hearing. Most prehearing conferences will be approximately one hour in length. To assist the Hearing Office in scheduling the conference, you must provide a minimum of four one-hour time slots when you will be available to participate.

8:00 - 9:00 a.m.	<input type="checkbox"/>	1:00 - 2:00 p.m.	<input type="checkbox"/>
9:00 - 10:00 a.m.	<input type="checkbox"/>	2:00 - 3:00 p.m.	<input type="checkbox"/>
10:00 - 11:00 a.m.	<input type="checkbox"/>	3:00 - 4:00 p.m.	<input type="checkbox"/>
11:00 - 12:00 p.m.	<input type="checkbox"/>	4:00 - 5:00 p.m.	<input type="checkbox"/>
12:00 - 1:00 p.m.	<input type="checkbox"/>	5:00 - 6:00 p.m.	<input type="checkbox"/>

Any of the above ☐

List the items you would like to have addressed during this prehearing conference.

If you need additional room, attach a separate sheet of paper.
Please send a copy of this form to all other parties.

STATE CALENDAR FOR 2002

The shaded dates indicate non-business days.

JANUARY							FEBRUARY							MARCH						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5						1	2						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28			24	25	26	27	28	29	30
														31						
APRIL							MAY							JUNE						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
	1	2	3	4	5	6				1	2	3	4							1
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22
28	29	30					26	27	28	29	30	31		23	24	25	26	27	28	29
														31						
JULY							AUGUST							SEPTEMBER						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
	1	2	3	4	5	6					1	2	3							
7	8	9	10	11	12	13	4	5	6	7	8	9	10	1	2	3	4	5	6	7
14	15	16	17	18	19	20	11	12	13	14	15	16	17	8	9	10	11	12	13	14
21	22	23	24	25	26	27	18	19	20	21	22	23	24	15	16	17	18	19	20	21
28	29	30	31				25	26	27	28	29	30	31	22	23	24	25	26	27	28
														29	30					
OCTOBER							NOVEMBER							DECEMBER						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5						1	2	1	2	3	4	5	6	7
6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14
13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21
20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28
27	28	29	30	31			24	25	26	27	28	29	30	29	30	31				